

JACK J. GRYNBERG

IBLA 85-587

Decided April 2, 1987

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer ES 32565.

Affirmed.

1. Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases

Under 30 U.S.C. § 226(b) (1982), land within the KGS of a producing oil or gas field may be leased only by competitive bidding. Where lands are determined to be within such a structure prior to issuance of a lease, a noncompetitive lease offer for such lands must be rejected, notwithstanding the fact the offer was filed prior to such determination. A delay in adjudication of the offer to allow revision of procedures for determining KGS boundaries is reasonable where it is necessary to ensure lands properly deemed within a KGS are leased competitively as required by statute.

2. Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases

An applicant for a noncompetitive oil and gas lease who challenges a determination that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error by a preponderance of the evidence.

APPEARANCES: Philip D. Barber, Esq., Denver, Colorado, for appellant; Ken Lee, Esq., Associate Solicitor, Branch of Eastern Resources, Alexandria, Virginia, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Jack J. Grynberg was selected with first priority for parcel ES-108 in the May 1983 list of lands available for the filing of simultaneous oil and gas lease applications. The Eastern States Office, Bureau of Land Management (BLM), received his signed lease forms and advance rental for noncompetitive oil and gas lease offer ES 32565 on October 3, 1983. On January 29, 1985, the

lands within parcel ES-108 were classified as being within the boundaries of the San Miguel known geological structure (KGS).

On March 29, 1985, BLM issued a decision rejecting the offer to lease because the lands described in the offer were within the boundaries of a KGS. Mr. Grynberg appealed that decision.

In his statement of reasons Grynberg argues that delay in issuing the lease should not deprive him of his right to the lease and asserts there is no geologic data to support the KGS determination.

Appellant contends he is being penalized for the delay between the time he submitted his signed offer to lease and the time BLM finally made the KGS determination. Appellant further contends that the technical evidence in existence in 1983 would not support a KGS determination which would encompass the lands described in the subject lease offer because, in 1983, all production in the area surrounding the subject lease was separated from that lease by dry holes. Referring to a letter from BLM dated April 8, 1985, appellant states that "[a]lthough it is not at all clear from the statements in [that letter], it appears that in late 1984, wells were drilled from which production was obtained in the general vicinity of the subject lease. Based on the wells drilled in late 1984, the KGS determination was apparently made." (Emphasis in original.) In essence, appellant contends that although some slight delay in issuance of a lease is understandable, BLM should not allow an intervening event to cause the disqualification of a priority drawee for a simultaneous lease.

In answer to appellant's statement of reasons, counsel for BLM has asserted the delay in adjudication of appellant's lease offer was reasonable in light of the new procedures instituted by BLM in Instruction Memorandum (IM) No. 84-36 (Oct. 14, 1983) to ensure that noncompetitive leases were not inadvertently issued for lands properly deemed to be within a KGS. BLM cites the litigation over noncompetitive leases in Ft. Chaffee, Arkansas, as a factor in this re-evaluation. See Arkla v. Texas Oil & Gas Corp., 734 F.2d 347 (8th Cir. 1984).

Further BLM has submitted a report which explains in part the conclusion that the subject land is properly included within the San Miguel Creek KGS. A memorandum from the District Manager, Southeast District, BLM, dated June 26, 1985, states in part:

Based on discussions with operators in the area and the state of Louisiana there has been a tremendous amount of activity in the area surrounding the subject lease. The state of Louisiana has issued numerous well permits within 1/2 - 2 miles of the subject lands. Discussions with a geologist employed by T. C. Morrow, Industries, (active in the area), suggests the presence of a shallow Nacatoch structural development to the southwest of the parcel as well as channel sand development to the northeast of the subject lands.

* * * A published structure map drawn on the base of the Austin Chalk shows structural development in the tract. Production from the Nacatoch and Paluxy formations are also oriented northeast-southwest. The structure map does not show any east-west trending faults and thus one would assume the presence of the productive formations under the subject tract. Production from outlying areas and more specifically within the same section establishes the fact that the area is presumptively productive until proven otherwise. The Floyd Ray Porter #1 Bruce Heirs well located in section 36, T. 10 N., R. 11 W. was completed on November 24, 1981 with established production from the Nacatoch formation.

[1] Section 17(b) of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226(b) (1982), provides that all public domain lands which are within "any known geological structure of a producing oil or gas field" may be leased only to the highest responsible qualified competitive bidder. See 43 CFR 3100.3-1; 43 CFR 3112.5-2(b); 43 CFR Part 3120 (competitive leases). A noncompetitive lease offer for lands designated within a KGS prior to lease issuance must be rejected as to those lands, even if the KGS determination was made following receipt of the lease offer. McDonald v. Clark, 771 F.2d 450 (10th Cir. 1985); Kathleen M. Blake, 96 IBLA 61 (1987); Frederick W. Lowey, 76 IBLA 195 (1983); Hepburn T. Armstrong, 72 IBLA 329 (1983). This Department has no discretion under the law to issue a lease of such lands pursuant to a noncompetitive lease offer. McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974); see McDonald v. Clark, supra. Rather, BLM is required to reject the offer. Stephen M. Naslund, 79 IBLA 252 (1986); Frederick W. Lowey, supra.

In IM No. 84-36 (Oct. 14, 1983) the Director, BLM, stated that "recent situations involving oil and gas noncompetitive leasing * * * have identified procedural practices that fail to define properly the extent of Known Geological Structures (KGS) and those lands that should have been offered competitively." 1/ To remedy these deficiencies, the Director temporarily halted issuance of leases pursuant to the simultaneous filing program (43 CFR Subpart 3112), pending review of KGS determinations including "all active areas where KGS have been determined on the basis of drainage areas rather than on geological interpretation." In a similar context, this Board has recently declined to find this delay in adjudicating simultaneously filed noncompetitive lease applications pending implementation of new procedures for KGS determination either unreasonable, ultra vires, or lacking in good faith, where the intent was to ensure lands within a KGS would not be leased in violation of the Mineral Leasing Act. Kathleen M. Blake, supra at 66.

1/ The opinion of the court in Arkla v. Texas Oil & Gas Corp., supra, in which the court reversed Departmental KGS determinations and held noncompetitive leases were improperly issued, discussed some problems encountered by the Department in making KGS determinations prior to IM No. 84-36 and implementation of new review procedures.

[2] "Known geologic structure" is defined in 43 CFR 3100.0-5(1) as "technically the trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive." The Secretary of the Interior has traditionally delegated the duty for determination of the existence and extent of a KGS to his technical expert in the field. When that expert makes such a determination, the Secretary is entitled to rely upon its reasoned opinion. Bruce Anderson, 63 IBLA 111, 113 (1982). A determination by Departmental technical experts will ordinarily not be set aside where it is not arbitrary or capricious and is supported by competent evidence. Ralph E. Peterson, 94 IBLA 340 (1986); Thunderbird Oil Corp., 91 IBLA 195 (1986). In addition to the previously quoted memorandum explaining the KGS determination, BLM has tendered published well data supporting its conclusion. The record establishes the presence of several gas wells which are productive in the Paluxy and Jenkins formations within a mile of the lease tract at issue, 2/ in addition to the oil well referred to in the memorandum. We find support in the record for the BLM determination.

Appellant's rebuttal consists essentially of the opinion of appellant's petroleum geologist, Morris Ettinger, that there is insufficient evidence to support inclusion of the lands within the KGS. The dry holes cited by appellant are unpersuasive in light of the pattern of productive wells in the vicinity of the land at issue. An applicant for a noncompetitive oil and gas lease who challenges a determination that certain lands are situated within the KGS of a producing oil or gas field has the burden of establishing by a preponderance of the evidence that the determination is in error. *Bender v. Clark*, 744 F.2d 1424 (10th Cir. 1982). Appellant has not met this burden.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.

Administrative Judge

We concur:

Franklin D. Arness

Administrative Judge

R. W. Mullen

Administrative Judge

2/ Several of the wells were drilled by T. C. Morrow, the firm referred to in the BLM memorandum.

